

108TH CONGRESS  
2D SESSION

# H. R. 4662

To amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2004

Mr. SHADEGG (for himself, Mr. BARTLETT of Maryland, Mr. CANNON, Mr. TOM DAVIS of Virginia, Mr. DEAL of Georgia, Mr. FEENEY, Mr. FLAKE, Mr. FRANKS of Arizona, Mr. GARRETT of New Jersey, Mr. GINGREY, Mr. HOEKSTRA, Mr. JONES of North Carolina, Mr. KING of Iowa, Mr. OTTER, Mr. PENCE, Mr. RYAN of Wisconsin, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SMITH of New Jersey, Mr. TOOMEY, and Mr. WILSON of South Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To amend the Public Health Service Act to provide for cooperative governing of individual health insurance coverage offered in interstate commerce.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as “Health Care Choice Act”.

1 **SEC. 2. SPECIFICATION OF CONSTITUTIONAL AUTHORITY**  
2 **FOR ENACTMENT OF LAW.**

3 This Act is enacted pursuant to the power granted  
4 Congress under article I, section 8, clause 3, of the United  
5 States Constitution.

6 **SEC. 3. FINDINGS.**

7 Congress finds the following:

8 (1) The application of numerous and significant  
9 variations in State law impacts the ability of insur-  
10 ers to offer, and individuals to obtain, affordable in-  
11 dividual health insurance coverage, thereby impeding  
12 commerce in individual health insurance coverage.

13 (2) Individual health insurance coverage is in-  
14 creasingly offered through the Internet, other elec-  
15 tronic means, and by mail, all of which are inher-  
16 ently part of interstate commerce.

17 (3) In response to these issues, it is appropriate  
18 to encourage increased efficiency in the offering of  
19 individual health insurance coverage through a col-  
20 laborative approach by the States in regulating this  
21 coverage.

22 (4) The establishment of risk-retention groups  
23 has provided a successful model for the sale of insur-  
24 ance across State lines, as the acts establishing  
25 those groups allow insurance to be sold in multiple  
26 States but regulated by a single State.

1 **SEC. 4. COOPERATIVE GOVERNING OF INDIVIDUAL**  
 2 **HEALTH INSURANCE COVERAGE.**

3 (a) IN GENERAL.—Title XXVII of the Public Health  
 4 Service Act (42 U.S.C. 300gg et seq.) is amended by add-  
 5 ing at the end the following new part:

6 “PART D—COOPERATIVE GOVERNING OF INDIVIDUAL  
 7 HEALTH INSURANCE COVERAGE

8 **“SEC. 2795. DEFINITIONS.**

9 “In this part:

10 “(1) PRIMARY STATE.—The term ‘primary  
 11 State’ means, with respect to individual health insur-  
 12 ance coverage offered by a health insurance issuer,  
 13 the State designated by the issuer as its primary  
 14 State. An issuer, with respect to a particular policy,  
 15 may only designate one such State as its primary  
 16 State with respect to all such coverage it offers.

17 “(2) SECONDARY STATE.—The term ‘secondary  
 18 State’ means, with respect to a health insurance  
 19 issuer, any State (in the United States or District  
 20 of Columbia) that is not the primary State.

21 “(3) HEALTH INSURANCE ISSUER.—The term  
 22 ‘health insurance issuer’ has the meaning given such  
 23 term in section 2791(b)(2).

24 “(4) INDIVIDUAL HEALTH INSURANCE COV-  
 25 ERAGE.—The term ‘individual health insurance cov-  
 26 erage’ means health insurance coverage offered in

1 the individual market, as defined in section  
2 2791(e)(1).

3 “(5) APPLICABLE STATE AUTHORITY.—The  
4 term ‘applicable State authority’ means, with respect  
5 to a health insurance issuer in a State, the State in-  
6 surance commissioner or official or officials des-  
7 ignated by the State to enforce the requirements of  
8 this title for the State involved with respect to the  
9 issuer.

10 “(6) HAZARDOUS FINANCIAL CONDITION.—The  
11 term ‘hazardous financial condition’ means that,  
12 based on its present or reasonably anticipated finan-  
13 cial condition, a health insurance issuer is unlikely  
14 to be able—

15 “(A) to meet obligations to policyholders  
16 with respect to known claims and reasonably  
17 anticipated claims; or

18 “(B) to pay other obligations in the normal  
19 course of business.

20 “(7) COVERED LAWS.—The term ‘covered laws’  
21 means the laws governing the issuance of an indi-  
22 vidual health insurance coverage pertaining to—

23 “(A) the provision of insurance related  
24 services;

1                   “(B) management, operations, and invest-  
2                   ment activities; and

3                   “(C) loss control and claims administration  
4                   for a health insurance issuer with respect to li-  
5                   ability for which the issuer provides insurance.

6   **“SEC. 2796. APPLICATION OF LAW.**

7           “(a) IN GENERAL.—The covered laws of the primary  
8   State shall apply to individual health insurance coverage  
9   offered by that health insurance issuer in the primary  
10   State and in any secondary State.

11          “(b) EXEMPTIONS FROM STATE LAWS, RULES, REG-  
12   ULATIONS, JUDGMENTS, AGREEMENTS, OR ORDERS IN A  
13   SECONDARY STATE.—Except as provided in this section,  
14   a health insurance issuer with respect to its offer, sale,  
15   and issuance of individual health insurance coverage in  
16   any secondary State is exempt from any State law, rule,  
17   regulation, judgment, agreement, or order of the sec-  
18   ondary State to the extent that such law, rule, regulation,  
19   judgment, agreement, or order would—

20                  “(1) make unlawful, or regulate, directly or in-  
21                  directly, the operation of the health insurance issuer  
22                  operating in the secondary State, except that any  
23                  secondary State may require such an issuer—

24                          “(A) to pay, on a nondiscriminatory basis,  
25                          applicable premium and other taxes which are

1           levied on insurers and surplus lines insurers,  
2           brokers, or policyholders under the laws of the  
3           State;

4           “(B) to register with and designate the  
5           State insurance commissioner as its agent solely  
6           for the purpose of receiving service of legal doc-  
7           uments or process;

8           “(C) to comply with a lawful order issued  
9           in a voluntary dissolution proceeding;

10          “(D) to comply with an injunction issued  
11          by a court of competent jurisdiction, upon a pe-  
12          tition by the State insurance commissioner al-  
13          leging that the issuer is in hazardous financial  
14          condition; and

15          “(E) to provide the following notice, in 12-  
16          point bold type, in any insurance coverage  
17          issued by such a health insurance issuer, with  
18          the 4 blank spaces therein being appropriately  
19          filled with the name of the health insurance  
20          issuer, the name of primary State, the name of  
21          the secondary State, and the name of the sec-  
22          ondary State, respectively, for the coverage con-  
23          cerned:

1                                   **‘Notice**

2           **‘This policy is issued by \_\_\_\_\_ and is**  
3 **governed by the laws and regulations of the**  
4 **State of \_\_\_\_\_. This policy may not be sub-**  
5 **ject to all of the insurance laws and regula-**  
6 **tions of the State of \_\_\_\_\_, including cov-**  
7 **erage of some services or benefits mandated**  
8 **by the law of the State of \_\_\_\_\_. Before**  
9 **purchasing this policy, you should carefully**  
10 **review the policy and determine what health**  
11 **care services the policy covers and what bene-**  
12 **fits it provides, including any exclusions, limi-**  
13 **tations, or conditions for such services or ben-**  
14 **efits.’; or**

15                           “(F) to participate, on a nondiscriminatory  
16                   basis, in any insurance insolvency guaranty as-  
17                   sociation to which a health insurance issuer in  
18                   the State is required to belong;

19                   “(2) require any individual health insurance  
20                   coverage issued by the issuer to be countersigned by  
21                   an insurance agent or broker residing in that Sec-  
22                   ondary State; or

23                   “(3) otherwise discriminate against the issuer  
24                   issuing insurance in both primary and secondary  
25                   States.

1       “(c) SCOPE OF EXEMPTIONS.—The exemptions spec-  
2 ified in subsection (b) apply to laws, rules, regulations,  
3 judgments, agreements, and orders governing the insur-  
4 ance business pertaining to—

5               “(1) individual health insurance coverage issued  
6       by a health insurance issuer;

7               “(2) the offer, sale, and issuance of individual  
8       health insurance coverage to an individual; and

9               “(3) the provision to an individual in relation to  
10      individual health insurance coverage of—

11               “(A) insurance related services;

12               “(B) management, operations, and invest-  
13      ment activities; and

14               “(C) loss control and claims administration  
15      for a health insurance issuer with respect to li-  
16      ability for which the issuer provides insurance.

17      “(d) LICENSING OF AGENTS OR BROKERS FOR  
18 HEALTH INSURANCE ISSUERS.—Any State may require  
19 that a person acting, or offering to act, as an agent or  
20 broker for a health insurance issuer with respect to the  
21 offering of individual health insurance coverage obtain a  
22 license from that State, except that a State may not im-  
23 pose any qualification or requirement which discriminates  
24 against a nonresident agent or broker.



1       “(e) DOCUMENTS FOR SUBMISSION TO STATE INSUR-  
2 ANCE COMMISSIONER.—Each health insurance issuer  
3 issuing individual health insurance coverage in both pri-  
4 mary and secondary States shall submit—

5               “(1) to the insurance commissioner of each  
6 State in which it intends to offer such coverage, be-  
7 fore it may offer individual health insurance cov-  
8 erage in such State—

9               “(A) a copy of plan of operation or  
10 feasibility study (which shall include the name  
11 of its primary State and its principal place of  
12 business); and

13               “(B) written notice of any change in its  
14 designation of its primary State; and

15               “(2) to the insurance commissioner of each sec-  
16 ondary State in which it offers individual health in-  
17 surance coverage, a copy of the issuer’s annual fi-  
18 nancial statement submitted to the primary State,  
19 which statement shall be certified by an independent  
20 public accountant and contain a statement of opin-  
21 ion on loss and loss adjustment expense reserves  
22 made by—

23               “(A) a member of the American Academy  
24 of Actuaries; or

25               “(B) a qualified loss reserve specialist.

1 “(f) POWER OF COURTS TO ENJOIN CONDUCT.—

2 Nothing in this section shall be construed to affect the

3 authority of any Federal or State court to enjoin—

4 “(1) the solicitation or sale of individual health

5 insurance coverage by a health insurance issuer to

6 any person or group who is not eligible for such in-

7 surance; or

8 “(2) the solicitation or sale of individual health

9 insurance coverage by, or operation of, a health in-

10 surance issuer that is in hazardous financial condi-

11 tion.

12 “(g) STATE POWERS TO ENFORCE STATE LAWS.—

13 “(1) IN GENERAL.—Subject to the provisions of

14 subsection (b)(1)(D) (relating to injunctions), noth-

15 ing in this section shall be construed to affect the

16 authority of any State to make use of any of its

17 powers to enforce the laws of such State with re-

18 spect to which a health insurance issuer is not ex-

19 empt under this section.

20 “(2) COURTS OF COMPETENT JURISDICTION.—

21 If a State seeks an injunction regarding the conduct

22 described in paragraphs (1) and (2) of subsection

23 (f), such injunction must be obtained from a Federal

24 or State court of competent jurisdiction.

1       “(h) STATES’ AUTHORITY TO SUE.—Nothing in this  
2 section shall affect the authority of any State to bring ac-  
3 tion in any Federal or State court.

4       “(i) GENERALLY APPLICABLE LAWS.—Nothing in  
5 this section shall be construed to affect the applicability  
6 of State laws generally applicable to persons or corpora-  
7 tions.

8       **“SEC. 2797. PRIMARY STATE MUST MEET FEDERAL FLOOR**  
9                   **BEFORE ISSUER MAY SELL INTO SECONDARY**  
10                  **STATES.**

11       “A health insurance issuer may not offer, sell, or  
12 issue individual health insurance coverage in a secondary  
13 State if the primary State does not meet the following re-  
14 quirements:

15           “(1) The State insurance commissioner must  
16 use a risk-based capital formula for the determina-  
17 tion of capital and surplus requirements for all  
18 health insurance issuers that are not health mainte-  
19 nance organizations (as defined in section 1301(a)).  
20 For such health maintenance organizations the State  
21 must have legislative or regulatory capital and sur-  
22 plus requirements.

23           “(2) The State must have legislation or regula-  
24 tions in place establishing an independent review  
25 process for individuals who are covered by individual

1 health insurance coverage unless the issuer provides  
2 an independent review mechanism functionally equiv-  
3 alent (as determined by the primary State insurance  
4 commissioner or official) to that prescribed in the  
5 ‘Health Carrier External Review Model Act’ of the  
6 National Association of Insurance Commissioners for  
7 all individuals who purchase insurance coverage  
8 under the terms of this part.

9 **“SEC. 2798. ENFORCEMENT.**

10 “(a) IN GENERAL.—Subject to subsection (c), the  
11 primary State has sole jurisdiction to enforce covered laws  
12 in primary and secondary States.

13 “(b) FAILURE TO COMPLY WITH PRIMARY STATE  
14 LAW.—In the case of individual health insurance coverage  
15 offered in a secondary State that fails to comply with cov-  
16 ered laws of the primary State, the applicable State au-  
17 thority of the secondary State shall notify, in writing, the  
18 applicable State authority of the primary State of sus-  
19 pected violations of the primary State’s laws.

20 “(c) FAILURE OF A PRIMARY STATE AUTHORITY TO  
21 TAKE ACTION.—The applicable State authority of the sec-  
22 ondary State may initiate regulatory proceedings to en-  
23 force the covered laws of the primary State if the applica-  
24 ble State authority of the primary State—

1 “(1) does not initiate regulatory or legal pro-  
2 ceedings within 30 days; or

3 “(2) fails to maintain an active investigation,  
4 negotiation, regulatory, or judicial proceeding for  
5 any 30-day period.

6 “(d) FAILURE TO RESOLVE DISPUTE.—If upon initi-  
7 ating proceedings under subsection (c), the applicable  
8 State authority of the secondary State is unable to resolve  
9 concerns related to suspected violations of covered laws of  
10 the primary State, such applicable secondary State au-  
11 thority may bring action in a court of appropriate jurisdic-  
12 tion.

13 “(e) COURT INTERPRETATION.—In reviewing action  
14 initiated by the applicable secondary State authority, the  
15 court of appropriate jurisdiction shall apply the covered  
16 laws of the primary State.”.

17 (b) EFFECTIVE DATE.—The amendment made by  
18 subsection (a) shall apply to individual health insurance  
19 coverage offered, issued, or sold after the date of the en-  
20 actment of this Act.

21 **SEC. 5. SEVERABILITY.**

22 If any provision of the Act or the application of such  
23 provision to any person or circumstance is held to be un-  
24 constitutional, the remainder of this Act and the applica-

1 tion of the provisions of such to any other person or cir-  
2 cumstance shall not be affected.

